

HOUSE BILL NO. 458

INTRODUCED BY C. KEOGH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CAPITAL GAINS INCOME INVESTED IN A
5 QUALIFIED OPPORTUNITY FUND IS DEFERRED; CLARIFYING THE APPLICATION OF FEDERAL TAX LAW
6 TO MONTANA FOR OPPORTUNITY ZONES; EXTENDING THE DEFERRAL FROM DECEMBER 31, 2026, TO
7 DECEMBER 31, 2030, FOR THE INDIVIDUAL INCOME TAX; PROVIDING THAT A TAXPAYER THAT DEFERS
8 CAPITAL GAIN INCOME FROM AN OPPORTUNITY ZONE AFTER DECEMBER 31, 2026, IS NOT ELIGIBLE
9 FOR A 2% REDUCTION IN TAXATION OF CAPITAL GAIN INCOME; AMENDING SECTIONS 15-30-2110,
10 15-30-2301, AND 15-31-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
11 RETROACTIVE APPLICABILITY DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 **Section 1.** Section 15-30-2110, MCA, is amended to read:
16 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (14), adjusted gross income is the
17 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
18 and in addition includes the following:

19 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
20 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
21 under federal law;

22 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
23 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

24 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
25 reduction of Montana income tax liability as determined under subsection (15);

26 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
27 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

28 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

29 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
30 amount recovered reduced the taxpayer's Montana income tax in the year deducted;



1 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
2 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
3 of the same estate or trust for the same tax period; and

4 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), the amount of any dividend
5 to the extent that the dividend is not included in federal adjusted gross income.

6 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
7 include the following, which are exempt from taxation under this chapter:

8 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
9 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
10 from taxation by Montana under federal law;

11 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
12 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

13 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
14 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

15 (c) (i) except as provided in subsection (2)(c)(ii) and subject to subsection (16), the first \$4,070 of all
16 pension and annuity income received as defined in 15-30-2101;

17 (ii) subject to subsection (16), for pension and annuity income described under subsection (2)(c)(i), as
18 follows:

19 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
20 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
21 excess of \$33,910 as shown on the taxpayer's return;

22 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
23 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
24 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$33,910
25 as shown on their joint return;

26 (d) all Montana income tax refunds or tax refund credits;

27 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

28 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
29 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
30 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,

- 1 or lodging;
- 2 (g) all benefits received under the workers' compensation laws;
- 3 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
4 employee under federal law;
- 5 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
6 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 7 (j) principal and income in a medical care savings account established in accordance with 15-61-201
8 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, including a medical care
9 savings account inherited by an immediate family member as provided in 15-61-202(6);
- 10 (k) principal and income in a first-time home buyer savings account established in accordance with
11 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
12 of a single-family residence;
- 13 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
14 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
15 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
16 a designated beneficiary;
- 17 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
18 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 19 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
20 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
21 of the same estate or trust for the same tax period;
- 22 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
23 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
24 is not provided for federal income tax purposes;
- 25 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
26 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
27 taxpayer meet the filing requirements in 15-30-2602.
- 28 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
29 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 30 (r) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in

1 15-31-163;

2 (s) the amount of a scholarship to an eligible student by a student scholarship organization pursuant to
3 15-30-3104; ~~and~~

4 (t) a payment received by a private landowner for providing public access to public land pursuant to Title
5 76, chapter 17, part 1; and

6 (u) subject to subsection (17), capital gains invested in a qualified opportunity fund as provided in section
7 1400Z-2 of the Internal Revenue Code, 26 U.S.C. 1400Z-2.

8 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(I) shall
9 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
10 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
11 is effective.

12 (4) (a) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
13 business deductions:

14 (i) by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
15 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
16 salaries paid regardless of the credit taken; or

17 (ii) for which a federal tax credit was elected under the Internal Revenue Code is allowed to deduct the
18 amount of the business expense paid when there is no corresponding state income tax credit or deduction,
19 regardless of the credit taken.

20 (b) The deductions in subsection (4)(a) must be made in the year that the wages, salaries, or business
21 expenses were used to compute the credit. In the case of a partnership or small business corporation, the
22 deductions in subsection (4)(a) must be made to determine the amount of income or loss of the partnership or
23 small business corporation.

24 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
25 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
26 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
27 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
28 Montana return.

29 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
30 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may

1 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
2 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
3 must be split equally on each return.

4 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
5 who file separate Montana income tax returns are not required to recompute allowable passive losses according
6 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
7 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
8 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

9 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
10 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.
11 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
12 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

13 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
14 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
15 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
16 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
17 gross income.

18 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
19 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
20 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
21 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
22 income.

23 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
24 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
25 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
26 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
27 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
28 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
29 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
30 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage

1 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
2 or expected to last at least 12 months.

3 (11) (a) An individual who contributes to one or more accounts established under the Montana family
4 education savings program or to a qualified tuition program established and maintained by another state as
5 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted
6 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
7 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
8 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
9 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
10 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the
11 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
12 to withdrawals of contributions that reduced adjusted gross income.

13 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
14 15-62-208.

15 (12) (a) An individual who contributes to one or more accounts established under the Montana achieving
16 a better life experience program or to a qualified program established and maintained by another state as
17 provided by section 529A(e)(7) of the Internal Revenue Code, 26 U.S.C. 529A(e)(7), may reduce adjusted gross
18 income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse
19 is entitled to a reduction, not to exceed \$3,000, for the spouses' contributions to the accounts. Spouses may
20 jointly elect to treat one-half of the total contributions made by the spouses as being made by each spouse. The
21 reduction in adjusted gross income under this subsection (12)(a) applies only with respect to contributions to an
22 account for which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild
23 if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with
24 respect to withdrawals of contributions that reduced adjusted gross income.

25 (b) Contributions made pursuant to this subsection (12) are subject to the recapture tax provided in
26 53-25-118.

27 (13) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
28 (13)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

- 29 (i) is a health care professional licensed in Montana as provided in Title 37;
30 (ii) is serving a significant portion of a designated geographic area, special population, or facility

1 population in a federally designated health professional shortage area, a medically underserved area or
2 population, or a federal nursing shortage county as determined by the secretary of health and human services
3 or by the governor;

4 (iii) has had a student loan incurred as a result of health-related education; and

5 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
6 program described in subsection (13)(b) as an incentive to practice in Montana.

7 (b) For the purposes of subsection (13)(a), a loan repayment program includes a federal, state, or
8 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
9 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
10 as a licensed health care professional.

11 (14) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of
12 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
13 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

14 (15) A refund received of federal income tax referred to in subsection (1)(b) must be allocated in the
15 following order as applicable:

16 (a) to federal income tax in a prior tax year that was not deducted on the state tax return in that prior tax
17 year;

18 (b) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
19 but did not result in a reduction in state income tax liability in that prior tax year; and

20 (c) to federal income tax in a prior tax year that was deducted on the state tax return in that prior tax year
21 and that reduced the taxpayer's state income tax liability in that prior tax year.

22 (16) By November 1 of each year, the department shall multiply the amount of pension and annuity
23 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
24 by the inflation factor for the following tax year, rounded to the nearest \$10. The resulting amounts are effective
25 for that following tax year and must be used as the basis for the exemption determined under subsection (2)(c).

26 (17) (a) A taxpayer may elect to extend the deferral provided in subsection (2)(u) for capital gains that
27 were invested in a Montana qualified opportunity fund until the tax year ending December 31, 2030, so long as
28 the amount invested by the taxpayer remains eligible for the capital gains deferral under section 1400Z-2 of the
29 Internal Revenue Code, 26 U.S.C. 1400Z-2, notwithstanding the December 31, 2026, deferral limitation in 26
30 U.S.C. 1400Z-2(b)(1)(B). A deferral election must be made on a form prescribed by the department prior to the

1 tax year ending December 31, 2026.

2 (b) For the purpose of this subsection (17), the following definitions apply:

3 (i) "Montana qualified opportunity fund" means a qualified opportunity fund as defined in 26 U.S.C.
4 1400Z-2 of which all of the qualified opportunity zone business property or qualified opportunity zone businesses
5 are primarily located or operated in opportunity zones located in the state of Montana.

6 (ii) "Primarily located or operated" means:

7 (A) at least 50% of the total gross income of an entity is derived from the active conduct of business in
8 a Montana opportunity zone; and

9 (B) a substantial portion of the intangible property of the entity is used in the active conduct of business
10 in a Montana opportunity zone. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L.
11 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001; subsection (2)(s)
12 terminates December 31, 2023--sec. 33, Ch. 457, L. 2015; subsection (2)(t) terminates June 30, 2027--sec. 10,
13 Ch. 374, L. 2017.)"

14

15 **Section 2.** Section 15-30-2301, MCA, is amended to read:

16 **"15-30-2301. Capital gains credit.** (1) Except as provided in subsection (2), an An individual taxpayer
17 is allowed a credit against the taxes imposed by 15-30-2103 in an amount equal to ~~4% of the taxpayer's net~~
18 ~~capital gains for tax years 2005 and 2006 and~~ 2% of the taxpayer's net capital gains ~~for tax years beginning after~~
19 ~~2006~~, as shown on the taxpayer's individual income tax return filed pursuant to 15-30-2602. The credit allowed
20 under this section may not exceed the taxpayer's income tax liability.

21 (2) An individual taxpayer that elects to receive a further deferral of capital gain income invested in a
22 Montana qualified opportunity fund after December 31, 2026, based on the provisions of 15-30-2110(17) is
23 prohibited from taking the credit provided for in this section."

24

25 **Section 3.** Section 15-31-113, MCA, is amended to read:

26 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized
27 in determining the corporation's gross income for federal income tax purposes and:

28 (a) including:

29 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5)
30 of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

1 (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate
2 income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may
3 be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana
4 income or corporate income tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing
5 through to the stockholders pursuant to federal law; and

6 (b) excluding:

7 (i) gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to
8 sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered,
9 when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this
10 section; and

11 (ii) capital gains invested in a qualified opportunity fund as provided in section 1400Z-2 of the Internal
12 Revenue Code, 26 U.S.C. 1400Z-2.

13 (2) The term "net income" means the gross income of the corporation less the deductions set forth in
14 15-31-114.

15 (3) A corporation is not exempt from the corporate income tax unless specifically provided for under
16 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from
17 the corporate income tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporate income tax
18 purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the
19 provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

20

21 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

22

23 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the
24 meaning of 1-2-109, to tax years beginning after December 31, 2018, and stock acquired by a qualified
25 opportunity fund after December 31, 2017.

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- END -